

PEARSON, J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HILARIO GARCIA AVENDANO.,)	
)	CASE NO. 4:12cv3045
Plaintiff,)	
)	
v.)	JUDGE BENITA Y. PEARSON
)	
B.O.P. DIRECTOR, <i>et al.</i> ,)	
)	<u>MEMORANDUM OF OPINION AND</u>
Defendants.)	<u>ORDER</u> [Regarding ECF No. 13]

Pro se Plaintiff Avendano filed this *Bivens* action alleging Eighth Amendment violations against Mr. Pugh, Warden of the Northeast Ohio Corrections Center (“NEOCC”); Ms. D. Hivner, NEOCC Health Services Administrator; Dr. Rupeka, a doctor at NEOCC; Mr. Hall, a medical provider at NEOCC (collectively “CCA Defendants”); and the Bureau of Prisons (“BOP”) Director. [ECF No. 13 at 1](#). On April 30, 2013 Magistrate Judge George J. Limbert issued a Report recommending the Court do the following: 1) grant the CCA Defendants’ motion to dismiss to the extent it seeks dismissal of a *Bivens* claim for damages, but deny the motion to dismiss to the extent it is predicated upon Plaintiff’s failure to state a claim upon which relief can be granted; 2) grant the CCA Defendants’ motion for summary judgment and dismiss Plaintiff’s Eighth Amendment claim with prejudice based upon Plaintiff’s failure to exhaust his administrative remedies; and 3) dismiss the Eighth Amendment claim against the BOP Director *sua sponte* and with prejudice based upon Plaintiff’s failure to exhaust his administrative remedies. [ECF No. 13 at 12](#). The consequence of adopting the recommendations is dismissal of the matter in its entirety with prejudice. [ECF No. 13 at 12](#).

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The Federal Magistrates Act requires a district court to conduct a *de novo* review only of those portions of a report and recommendation to which the parties have made an objection. [28 U.S.C. § 636\(b\)\(1\)\(C\)](#). Parties must file objections to a report and recommendation within fourteen days of service. [Id.](#); [Fed. R. Civ. P. 72\(b\)\(2\)](#). Failure to object within this time waives a party's right to appeal the district court's judgment. [Thomas v. Arn](#), 474 U.S. 140, 145 (1985); [United States v. Walters](#), 638 F.2d 947, 949-50 (6th Cir. 1981). Absent objection, a district court may adopt a magistrate judge's report without review. See [Thomas](#), 474 U.S. at 149.

In the instant case, objections to the Report were due on May 14, 2013. Plaintiff has not filed an objection. The Court finds that the Report accurately reflects the record, comports with the law, and supports the magistrate judge's recommendation.

Accordingly, the Court adopts the Report and Recommendation ([ECF No. 13](#)) in its entirety and dismisses all claims with prejudice.

IT IS SO ORDERED.

May 20, 2013
Date

/s/ Benita Y. Pearson
Benita Y. Pearson
United States District Judge